

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
(Big Stone Gap Division)**

MELINDA SCOTT,

Plaintiff,

v.

WISE COUNTY DEPARTMENT OF
SOCIAL SERVICES, *et al.*,

Defendants.

Case No. 2:20-cv-00014-JPJ-PMS

MOTION TO REQUIRE AN APPEAL BOND

NOW COMES Defendant Joshua Moon, by counsel, and submits this Motion to require the Plaintiff to post an appeal bond pursuant to Fed. R. App. P. 24 (a)(3)(A). In support of this Motion, Defendant Moon states as follows:

- 1) This Court permitted the Plaintiff to proceed *in forma pauperis* by order entered July 13, 2020. ECF No. 3.
- 2) The Court previously permitted the Plaintiff to proceed *in forma pauperis* in two cases against the same defendant, both of which were dismissed for failure to state a claim. *Scott v. Moon*, No. 2:19CV00005, 2019 WL 332415, at *3 (W.D. Va. Jan. 24, 2019) (dismissing action for failure to state a viable claim), *aff'd*, 773 F. App'x 138 (4th Cir.) (unpublished), *cert. denied*, 140 S. Ct. 478 (2019); *Scott v. Carlson*, No. 2:18CV00047, 2018 WL 6537145, at *2–5 (W.D. Va. Dec. 12, 2018) (same), *aff'd*, 773 F. App'x 136 (4th Cir.) (unpublished), *cert. denied*, 140 S. Ct. 400 (2019).
- 3) In this case, the Court has noted Ms. Scott's pattern of "repetitive meritless filings" and dismissed claims against Mr. Moon again. ECF No. 61. The Court also expressly noted

the numerous similarities between the claims Ms. Scott is raising in this litigation and the claims she raised unsuccessfully in her previous litigation in the same court against the same defendant relating to the same subject.

- 4) Mr. Moon has pointed out in various of his filings that this claim is but the most recent episode in a years-long crusade of litigation which the Plaintiff has brought against Mr. Moon, and that she has conducted this litigation in a manner that seems calculated to increase costs for Mr. Moon and burdens for the judiciary. See, e.g., ECF Nos. 25, 26, 30, 35, 45, 48, 53, and 55.
- 5) Mr. Moon has received an extension of time to file a motion pursuant to Fed. R. Civ. P. 54 (d) to recover his costs and fees in this Court. ECF No. 64. However, the Plaintiff has both written to undersigned counsel and posted online to indicate that she is judgment-proof. Mr. Moon thus expects that even if this Court ultimately awards him a judgment for his costs and fees, he will face an uphill battle to collect from the Plaintiff.
- 6) Fed. R. App. P. 7 empowers this Court to set a civil appeal bond to ensure Mr. Moon is made whole for his costs on appeal.
- 7) Fed. R. App. P. 24 (a)(3) states that a litigant who was permitted to proceed in forma pauperis in the trial court is ordinarily entitled to appeal without filing an appeal bond, with one notable exception: if “the district court—before or after the notice of appeal is filed—certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding,” then an appeal bond may be required.
- 8) Given the pattern of Ms. Scott’s litigation against Mr. Moon and others to date, including two appeals to the Fourth Circuit and to the U.S. Supreme Court that have already been

resolved in Mr. Moon's favor, it is hard to comprehend what good faith basis there could possibly be for Ms. Scott to file yet another appeal in this case. Instead, it seems much more likely that her decision to appeal again is yet another "repetitive meritless filing" in a string of repetitive meritless filings which serve no purpose other than to drive up the costs of this litigation and burden the judiciary.

WHEREFORE, Mr. Moon moves that this Court set an appeal bond pursuant to Fed. R. App. P. 24 (a)(3)(A), or alternatively moves that this Court require Ms. Scott to establish the good faith basis for any appeal before making a determination relating to the need for an appeal bond.

Respectfully submitted this the 9th day of September, 2021,

JOSHUA MOON

By Counsel:

/s/Matthew D. Hardin

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Certificate of Service

I hereby certify that I will file a true and correct copy of the foregoing document with the Court's CM/ECF system, which will electronically serve counsel of record. I have also deposited a true and correct copy of the foregoing document into the U.S. Mail, with First Class postage prepaid, directed to:

Melinda Scott
2014PMB87
Post Office Box 1133
Richmond, VA 23218

Dated: September 9, 2021

/s/Matthew D. Hardin
Matthew D. Hardin
Counsel for Joshua Moon